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November 20, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Comments of Pacific FM, Inc.
In MM Docket No. 87-268

Dear Mr. Caton:

Pacific FM, Inc. herewith submits its Comments in the matter of Advanced Television Systems and their impact upon existing television broadcast service MM Docket No. 87-268.

Should you have need for additional information in connection with these Comments, kindly contact the undersigned.

Sincerely,


Gregg P. Skall

Enclosure

cc: Mr. James Gabbert

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In the Matter of

Advance Television Systems
and Their Impact Upon the
Existing Television Broadcast
Service

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MM Docket 87-268

COMMENTS OF PACIFIC FM, INC.

Pacific FM, Inc. ("Pacific FM"), licensee of television station KOFY-TV, San Francisco, California hereby submits its Comments in response to the Fourth Further Notice of Proposed Rule Making and Third Notice of Inquiry ("Notice") (FCC 95-315, released August 9, 1995) in the above-captioned proceeding.

Pacific FM is historically an independent UHF television station in San Francisco, the nation's fifth largest market. Recently it affiliated with the new born Warner Brothers (WB) television network. It is believed by Pacific FM's majority shareholder, James Gabbert, that it is the last remaining independently owned television station in the nation's top ten markets. As such, Pacific FM brings a unique viewpoint to this proceeding, representing a diminishing breed of locally owned, community based independent television ownership.

I. AUCTION OF ATV SPECTRUM

1. Pacific FM believes it is vital to the continuation of the American television broadcasting system that the Commission proceed promptly with a licensing scheme to bring advanced television systems ("ATV") to the American public. New digital television technologies are essential to the survival of our free, over-the-air broadcasting system that has so well served the American public. It also provides a critical new technological capability to television broadcasters which will permit them to serve and compete in the new multiple

channel digital marketplace. While others offer multiple channels of programming without regulatory restraints or public interest obligations, ATV will enable broadcasters to keep competitive pace with them while maintaining vital community oriented services. Those same services have been a hallmark of the American system of broadcasting since the Radio Act of 1927 first established the public interest standard as a fundamental axiom of broadcasting service. Only a non-random, non-auction, public interest based assignment policy will permit existing broadcasters to continue that important mission. Only through adherence to this principle can the Commission and the American public be assured that over-the-air broadcasters can continue to operate with a public interest commitment.

2. The Commission must recognize, however, that unlike the environment of 1927, today's over-the-air broadcasters operate in a harshly competitive market. It is axiomatic that competitive markets require their participants to make quick and flexible responses to changing market conditions. Accordingly, while broadcasters must be required to provide at least one free over-the-air television channel enhanced by the new digital technology, in the stern reality of today's competitive environment, the Commission should permit the marketplace to function to its fullest. The market, rather than the regulators, should dictate whether the remaining spectrum should be used for additional free television services, subscription services, data transmission or other new services.

3. It bears emphasis that an enormous difference exists between broadcasting and other services regulated by the FCC. Even other media of mass communication, such as cable television, have not been imbued with a public interest obligation. Most certainly, other carrier services such as IVDS, PCS and SMR have no such character. Yet some would treat over-the-air broadcasting similarly to such other services by establishing an up-front auction

for the ATV spectrum in which broadcasters must participate. Buoyed by the recent Commission successes in raising large sums for the U.S. Treasury, such a scheme appears attractive, particularly in the short view. However, long after the marginal ATV auction contributions to the U.S. Treasury might be paid, the fundamental injury to the American system of public service broadcasting would be evident. The need to capitalize spectrum auction costs on top of the other substantial investment requirements of broadcasting in a modern digital age would likely render futile any hope of continued public interest broadcasting. With such overhead, the need to create cash flow in the face of significant competition from satellite and terrestrial media will require that even those broadcasters who ardently wish to continue less profitable educational programming, abandon that track for mass appeal programming. Indeed, faced with such capital requirements, Pacific FM seriously doubts that locally owned community based television can survive at all.

4. It was just these concerns that led the Commission to exempt the broadcast spectrum from auctions when Section 309(j) of the Communications Act of 1934 was passed. Nothing has changed since that time. Both the Congress and the Commission should recognize the dangers inherent in auctioning broadcast spectrum and reject that concept. Clearly, the cash reward to the Treasury is not sufficient to justify the cost. As a nation, it is not wise to value everything on an exclusively cash basis. We do have other values too!

5. Moreover, the point that broadcasters are faced with increasingly hostile competition from multiple channel mass media providers such as cable television, MDS and satellite should not be lost on the Commission. If traditional community based broadcasters are to survive, they must be permitted the tools and resources with which to fashion that survival. Increasingly, it is becoming clear that only those who have multiple channel capability will

attract sufficient attention from the public to survive in the long term. With this in mind, reality dictates that broadcasters should be permitted adequate spectrum for multi-channel capability to mature into the next generation of their own business. Therefore, neither should auctions be endorsed for the future. Broadcasters will already be faced with an increased cost burden to sustain the transition to ATV. For years it has been publicly debated whether over-the-air broadcasters outside the very largest markets can sustain that cost of HDTV and remain profitable. Further governmental costs from spectrum auctions, at any point now or in the future, will certainly push many broadcasters over the edge or require the transition to subscription service for even community based television.

II. THE PACE OF TRANSITION

6. These Comments focus on the non-group, independently owned broadcaster to explain the impact of the transition of ATV. Just as important in this analysis is the Commission's proposal for a transition period. In its Further Notice of Proposed Rule Making and Third Notice of Inquiry at paragraph 64, the Commission inquires whether a six year construction period is appropriate. Simply stated, neither we nor the Commission can know the answer to that question. This is so because only the marketplace can make that decision, based upon the speed with which it embraces ATV technology and with which consumers purchase the receivers necessary to allow ATV to succeed. Only market penetration, measured by reliable independent research, can be the Commission's guide to determine when the NTSC era should end. Only when a clear preponderance of television households are equipped to receive ATV transmissions should the Commission begin phasing out NTSC. To do otherwise would disenfranchise many Americans who simply could not or should not, afford the high cost of ATV receivers. An arbitrary benchmark would gerrymander the

economics of the marketplace, causing inappropriate buying decisions by many who can ill afford the premature purchase of an expensive new television receiver. Commissioner Chong seemed to believe likewise in expressing her concern that the Commission not "disenfranchise those Americans who rely on their analog TV sets for over-the-air broadcast service." See Separate Statement of Commissioner Rachelle Chong at page 3.

7. The Notice, at paragraph 64 allows broadcasters only a "Hobson's choice" in proposing to require an "election" whether to adopt ATV within the first six months of the date the Commission adopts an ATV standard. A broadcaster who does not "elect" to construct ATV facilities would, under the Commission's scheme, elect instead to go out of business; for at the end of the transition period, it would be required to turn in its NTSC license!

8. When confronted with the extraordinarily high costs of ATV conversion, such is not the easy choice one might have imagined. Zenith estimates the cost of ATV receivers at \$2,500. Even a converter box for existing receivers will cost \$500. Prices will likely fall over time, but unless there is a rush of consumers to embrace ATV, it could be many years before there is sufficient production quantity to significantly reduce consumer cost.

9. Broadcasters, on the other hand, would be required to spend \$7-9 million per station to convert to ATV or eventually forfeit their licenses. Existing broadcasters have built community businesses and through their commitment of finances and personal energy developed services and business goodwill that sustain an ongoing business. If they have developed the factors which comprise a renewal expectancy, they should be entitled to continue that business and make investments in the new generations of technology required to maintain it. But those decisions should be governed by rational economic factors which provide logical

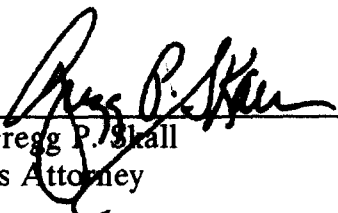
choice and an avenue for continued economic well being. Such a choice can be governed only by marketplace considerations. Rather, the Commission proposals could result in the transition period made arbitrarily short without adequate cognizance of consumer receiver penetration. On top of that, if auction costs are imposed upon the broadcaster making the transition, the process will look less like the orderly path of an established business embracing new technology, and more like a proverbial yank of the business rug from under the feet of many heritage community broadcasters.

10. Providing ATV spectrum to broadcasters is not the "giveaway" that proponents of auctions and spectrum fees claim. They argue that broadcasters should pay for spectrum in the same manner that firms using federal lands for grazing cattle, mining or logging pay for the use of public property. This is a poor analogy. Such users of federal land are not required to invest millions of dollars in special equipment uniquely suited to the use of that public property. Nor are they pioneering a new and unproven technology as broadcasters utilizing ATV will be doing. While there is an established ready market for the products that result from grazing, mining and logging, ATV is a gamble that some predict may never pay off. If it does, it will be due primarily to the skill of broadcast entrepreneurs in developing ATV for the public benefit. Moreover, at the end of the transition, since broadcasters will return their existing NTSC spectrum to the federal government, they are not in anyway getting a "free ride". They are merely being provided an ability to stay on the train, albeit a remodeled train, and thereby stay in the business they have built over the last few decades. To be sure, it is a more expensive train ride. The NAB estimates that basic conversion costs, with no local origination, will cost each station up to \$1.5 million. Full conversion to local origination programming will cost an additional \$7-9 million. Further additional costs will

be associated with dual operation of NTSC and ATV facilities during the transition period. NAB estimates conversion to ATV will cost stations \$400,000 per year. For many stations that sum represents a significant portion of their cash flow and for many small stations, it exceeds their cash flow. Granted, it is a necessary train ride, but forcing these costs upon broadcasters when there are not even sufficient quantities of affordable receivers in the marketplace, much less in consumers' homes, is in no way in the public interest, and it is definitely not in the broadcaster's interest. Adding the cost of auctioned spectrum to the price of the ticket will ensure that many fewer passengers will be aboard the train, reducing the overall level of competition and local focus in broadcasting.

Respectfully submitted,

PACIFIC FM, INC.

By: 
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Its Attorney

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